

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PENNIE COTTRELL, individually,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION, d/b/a AMTRAK,

Defendant.

Case No.

**NOTICE OF REMOVAL TO  
FEDERAL COURT**

Defendant National Railroad Passenger Corporation d/b/a ("Amtrak") by and through its attorneys, hereby removes the above-captioned action, currently pending in the Superior Court of King County, Washington, to the United States District Court for the Western District of Washington. Removal is based on 28 U.S.C. §§ 1331, 1332, 1349, and 1367 and authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Defendant states:

**I. BACKGROUND**

Plaintiff commenced this action by filing her lawsuit in King County Superior Court, on or about January 3, 2018, under Cause No. 18-2-00341-5 SEA (the "State Court Action"). Pursuant to LCR 101(b), a true and correct copy of the operative complaint in the State Court Action is appended hereto as **Exhibit A**.

**II. STATUTORY REQUIREMENTS**

A. **Federal Question Jurisdiction**. Federal question jurisdiction exists in this action because Plaintiff has asserted a claim against Amtrak, a federally chartered corporation whose

NOTICE OF REMOVAL TO FEDERAL COURT - 1

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

majority stockholder is the United States of America.

Amtrak was created under the Rail Passenger Service Act of 1970, 45 U.S.C. § 541, *et seq.* (recodified as 49 U.S.C. § 24101-24709) and is therefore a federally chartered corporation. In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), the United States Supreme Court ruled that an action against a federally chartered corporation presented a federal question under 28 U.S.C. § 1331. As a result, this Court has original jurisdiction of this action against Amtrak under 28 U.S.C. § 1331, which provides for original jurisdiction in cases that arise under the laws of the United States, and 28 U.S.C. § 1349, which provides for original jurisdiction over claims against corporations where the United States owns more than 50 percent of the capital stock. *See Aliotta v. National R.R. Passenger Corporation*, 315 F.3d 756 (7th Cir. 2003); *Walker v. National R.R. Passenger Corp.*, 703 F. Supp. 2d 495, 500 (D. Md; 2010) and *Hollus v. Amtrak*, 937 F. Supp. 1110, 1113-14 (D. N.J. 1996).

B. Diversity Jurisdiction.

1. Complete Diversity Exists. Diversity jurisdiction exists in this action because Plaintiff and Amtrak are citizens of different states. 28 U.S.C. § 1332(a)(1). “Complete diversity exists when the parties are domiciled in separate states.” *Umouyo v. Bank of Am., N.A.*, No. 2:16-CV-01576-RAJ, 2017 WL 1532664, at \*2 (W.D. Wash. Apr. 28, 2017) (citing *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Plaintiff is domiciled in and is therefore a citizen of Washington. Yates Decl. ¶ 3; *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). “Amtrak is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action.” 49 U.S.C. § 24301(b). Plaintiff and Amtrak are therefore citizens of different states for diversity jurisdiction purposes. Finally, the citizenship of “Doe” defendants is disregarded for purposes of the diversity jurisdiction analysis. 28 U.S.C. § 1441(b). *See* Complaint at ¶ 1.3.

2. Amount in Controversy. The Complaint seeks economic and noneconomic damages for alleged serious physical and mental injuries arising out of the December 18, 2017 derailment of Amtrak Cascades Train No. 501. Complaint ¶¶ 5.1-5.2. Given the nature of

Plaintiff's claims and alleged damages, Amtrak alleges that the amount in controversy is expected to exceed the jurisdictional threshold of \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (explaining that a removing defendant need only make "a plausible allegation that the amount in controversy exceeds the jurisdictional threshold" if the amount is not specified). The amount in controversy requirement is met.

### III. PROCEDURAL REQUIREMENTS

A. Removal to this Court Is Proper. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and 1446(a), Defendant files this Notice of Removal in the United States District Court for the Western District of Washington, which is the federal district court embracing the state court where Plaintiff has brought the State Court Action - King County, Washington. Venue is proper in this district pursuant to 28 U.S.C. 1391(a) and 28 U.S.C. 128(b).

B. Removal Is Timely. Amtrak is unaware of having been served with a copy of the Summons and Complaint in the State Court Action. Yates Decl. ¶ 4. Defendant has filed this Notice within 30 days after its receipt of the Complaint in the State Court Action on or about January 3, 2018. As such, removal is timely. *See* 28 U.S.C. § 1446(b)(2)(B).

C. Consent. Consent is not required for removal under 28 U.S.C. § 1331 and there are no other defendants from whom to obtain consent to the extent this matter is removed under 28 U.S.C. § 1332.

D. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified.

E. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

F. Pleadings and Process. True and correct copies of the pleadings on file in the State Court Action, including a current docket sheet, are attached to the Yates Decl. as Exhibit

A. *See* 28 U.S.C. § 1446(a). Amtrak has paid the appropriate filing fee to the Clerk of this Court upon the filing of this Notice.

NOTICE OF REMOVAL TO FEDERAL COURT - 3

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

019188.0389/7186103.1

1 G. Notice. Amtrak will promptly serve Plaintiff and file with this Court its Notice  
2 of Removal to Plaintiff, informing Plaintiff that this matter has been removed to federal court.  
3 *See* 28 U.S.C. §§ 1446(a), (d). Amtrak will also promptly file with the Clerk of the Superior  
4 Court of Washington, County of King, and serve on Plaintiff, a Notice to Clerk of Removal to  
5 Federal Court, pursuant to 28 U.S.C. § 1446(d).

6 WHEREFORE, this action should proceed in the United States District Court for the  
7 Western District of Washington, as an action properly removed thereto.

8 DATED this 17th day of January 2018.

9 LANE POWELL PC

10  
11 By: /s/ Tim D. Wackerbarth  
12 Tim D. Wackerbarth, WSBA No. 13673  
wackerbartht@lanepowell.com

13 By: /s/ Andrew G. Yates  
14 Andrew G. Yates, WSBA No. 34239  
yatesa@lanepowell.com

15 By: /s/ Warren E. Babb, Jr.  
16 Warren E. Babb, Jr., WSBA No. 13410  
babbw@lanepowell.com

17 By: /s/ Rachel B. Greenlee  
18 Rachel B. Greenlee, WSBA No. 49873  
greenleer@lanepowell.com

19 Attorneys for Defendant National Railroad  
20 Passenger Corporation d/b/a Amtrak  
21  
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23  
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25  
26  
27

**CERTIFICATE OF SERVICE**

I, hereby certify under penalty of perjury of the laws of the State of Washington that on the 17<sup>th</sup> day of January 2018, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

Robert N. Gellatly  
David M. Beninger  
Andrew Hoyal  
Luvera Law Firm  
701 Fifth Avenue, Suite 6700  
Seattle, WA 98104-7016  
[robert@luverallawfirm.com](mailto:robert@luverallawfirm.com)  
[david@luverallawfirm.com](mailto:david@luverallawfirm.com)  
[andy@luverallawfirm.com](mailto:andy@luverallawfirm.com)

- ☒ by CM/ECF  
☐ by Electronic Mail  
☐ by Facsimile Transmission  
☐ by First Class Mail  
☒ by Hand Delivery  
☐ by Overnight Delivery

Robert A. Clifford  
Michael S. Krzak  
Sean P. Driscoll  
Clifford Law Offices  
120 N. LaSalle Street, 31st Floor  
Chicago, IL 60602-2554  
[rac@cliffordlaw.com](mailto:rac@cliffordlaw.com)  
[msk@cliffordlaw.com](mailto:msk@cliffordlaw.com)  
[spd@cliffordlaw.com](mailto:spd@cliffordlaw.com)

- ☐ by CM/ECF  
☐ by Electronic Mail  
☐ by Facsimile Transmission  
☐ by First Class Mail  
☐ by Hand Delivery  
☒ by Overnight Delivery

Raymond E.S. Bishop  
Derek K. Moore  
Ben R. Ferguson  
Bishop Legal  
19743 First Avenue S.  
Normandy Park, WA 98148-2401  
[ray@bishoplegal.com](mailto:ray@bishoplegal.com)  
[derek@bishoplegal.com](mailto:derek@bishoplegal.com)  
[ben@bishoplegal.com](mailto:ben@bishoplegal.com)

- ☒ by CM/ECF  
☐ by Electronic Mail  
☐ by Facsimile Transmission  
☐ by First Class Mail  
☒ by Hand Delivery  
☐ by Overnight Delivery

DATED this 17<sup>th</sup> day of January 2018.

  
Sabrina Mitchell

# **EXHIBIT A**

FILED

18 JAN 03 PM 2:23

KING COUNTY  
SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 18-2-00341-5 SEA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PENNIE COTTRELL, individually,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant.

NO.

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff and pursuant to the common law, the constitution and other statutes, and claims as follows:

**1. IDENTIFICATION OF PARTIES**

1.1 Plaintiff, Pennie Cottrell, is an adult U.S. citizen.

1.2 Defendant, NATIONAL RAILROAD PASSENGER CORPORATION a/ka/ AMTRAK (AMTRAK), is a corporation organized and existing under the laws of the United States of America with a principal place of business in Washington, D.C. Defendant AMTRAK has an office for the transaction of business, and transacts business in King County, Washington.

COMPLAINT FOR DAMAGES - 1

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ATTORNEYS AT LAW

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SEATTLE, WASHINGTON 98104  
(206) 467-6090

1           1.3     There may be unknown entities or “John Does” who may be at fault and when their  
2 identification becomes known, these pleadings may be amended accordingly.

3                           **2.     JURISDICTION AND VENUE**

4           2.1     The court has general and specific jurisdiction over the claims asserted herein by  
5 Plaintiff pursuant to RCW 4.28.185 and other Washington statutes. Venue is proper in King  
6 County, Washington, as AMTRAK resides in King County within the meaning of RCW 4.12.025  
7 as it transacts business in King County, has an office for the transaction of business within King  
8 County, transacted business in King County at the time this cause of action arose, and/or has  
9 persons residing in King County upon whom service of process for the corporation may be made.

10                           **3.     NATURE OF OCCURRENCE**

11           3.1.     On and before December 18, 2017, Defendant, AMTRAK, was a corporation doing  
12 business as a common carrier engaged in the transportation of passengers between various  
13 destinations in the State of Washington.

14           3.2     On December 18, 2017, Defendant, AMTRAK, through its employees and/or  
15 agents, operated, managed, maintained, supervised, owned, designed, constructed and/or  
16 controlled AMTRAK Train No. 501, that originated in Seattle, Washington and was destined for  
17 other stops.

18           3.3     Pennie Cottrell purchased tickets, and on December 18, 2017, boarded AMTRAK  
19 Train No. 501 at the King Street Station in Seattle, Washington.

20           3.4     At approximately 7:33 a.m., AMTRAK Train No. 501 traveled on a segment of  
21 railroad track about 40 miles south of Seattle, Washington that was operated, managed,  
22 maintained, supervised, owned, designed, constructed and/or controlled, or contracted to operate,  
23  
24



1 manage, maintain, supervise, own and/or control by Defendant AMTRAK. AMTRAK Train No.  
2 501 was operated by employees and/or agents of Defendant AMTRAK.

3 3.5 A sharp and dangerous curve existed on this segment where the railroad track  
4 crossed over I-5 from west to east.

5 3.6 On December 18, 2017, at approximately 7:33 a.m., AMTRAK Train No. 501  
6 approached the curve and bridge crossing I-5 at a speed greatly exceeding the authorized, posted,  
7 safe and lawful speed limit for this segment of the track.

8 3.7 AMTRAK Train No. 501 derailed through the curve and at the bridge crossing I-5,  
9 causing serious injuries to Pennie Cottrell who was a passenger on board the train.

10 3.8 At all times relevant to this accident, Defendant AMTRAK equipped AMTRAK  
11 Train No. 501 with a Positive Train Control system (hereinafter "PTC"), but knowingly failed to  
12 make the system operable.

13 3.9 In 2008, Congress enacted the Rail Safety Improvement Act of 2008 (RSIA), which  
14 requires passenger railroads to install a PTC system no later than the end of 2015.

15 3.10 The PTC systems mandated by Congress were designed specifically to increase  
16 safety and prevent derailments caused by excessive speeds, among other purposes.

17 3.11 PTC provides real-time information to train crew members about, among other  
18 things, the areas in which a train must be slowed or stopped and the speed limits at approaching  
19 curves and other reduced-speed locations.

20 3.12 PTC also warns the train crew of the train's safe braking distance in curved or  
21 reduced-speed locations, and displays the same on screens inside the locomotive's cab.

3.15 Defendant, AMTRAK, knowingly and intentionally failed to put in place and utilize an operable PTC or similar safety control system on the AMTRAK Train No. 501 and the segment of railroad track where this tragic and preventable accident occurred.

3.20 For at least two (2) years prior to December 18, 2017, Defendant, AMTRAK, knew that train control systems could prevent derailments.

#### 4. NATURE OF LIABILITY

4.2 On December 18, 2017, Defendant AMTRAK, through its agents and/or employees, was a common carrier and owed passenger Pennie Cottrell the highest duty of care.

COMPLAINT FOR DAMAGES - 4

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SEATTLE, WASHINGTON 98104  
(206) 467-6090

- a. Failed to slow down its train at the aforesaid point when it knew or should have known that the speed was too fast for the sharp and dangerous curve;
- b. Operated the train in excess of the authorized, posted, safe and lawful speed limit;
- c. Failed to install and render operable proper train-control safety and speed system;
- d. Operated the train without keeping a safe and proper lookout;
- e. Failed to comply with Defendant's own operational and safety plan, rules, standards and procedures;
- f. Failed to comply with the applicable federal standards of care, including but not limited to the failure to comply with applicable federal statutes or regulations;
- g. Failed to properly train its agents and/or employees in the safe operations of the train;
- h. Failed to properly supervise its agents and/or employees in the proper operation of the train.

4.4 Defendant AMTRAK is also liable for punitive and/or exemplary damages under choice of law principles for the reckless and/or willful disregard of the rights and safety of the passengers and the public.

4.5 Defendant AMTRAK failed to provide material information to Pennie Cottrell, thus acting unfairly or deceptively in trade or commerce in violation of the Washington Consumer Protection Act, RCW 19.86. et seq., including, but not limited to, the failure to inform her that:

- a. The engineer had insufficient experience and training to safely operate AMTRAK Train No. 501 on the route originating in Seattle on December 18, 2017;
- b. AMTRAK operated the train with an assistant conductor who was neither certified nor qualified;
- c. AMTRAK operated the train without enabling and/or providing a fully operational PTC or other safety devices.

## 5. INJURIES, HARM AND DAMAGES

5.1 As a direct and proximate result of one or more of the aforesaid acts and/or omissions of the Defendant AMTRAK, Plaintiff has suffered physical and emotional injuries, including but not limited to multiple broken bones requiring past and future medical care, disability, loss of enjoyment of life, pain, anxiety, distress and emotional trauma, physical impairment and disfigurement, pecuniary and economic losses, and other injuries, harm and noneconomic damages which are ongoing and which the total amount will be proven at trial;

5.2 Plaintiff has suffered injury and damages, including loss of business or property as a result of Defendant AMTRAK's violation of the Consumer Protection Act.

## 6. RELIEF CLAIMED

6.1 Plaintiff claims all economic and non-economic damages along with all compensatory, pecuniary and exemplary damages.

6.2 Plaintiffs claim all fees and costs, including attorney's fees, treble damages, and prejudgment interest and all other damages recoverable under Washington's Consumer Protection Act.

6.3 Plaintiff seeks injunctive relief to protect the public.

6.4 Plaintiff reserves the right to seek other damages as appropriate.

WHEREFORE, Plaintiff Pennie Cottrell prays for judgment against Defendant, NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK, in such amount as will be proven at the time of trial, together with such other and further relief as the jury or court deems appropriate.

DATED this 3<sup>rd</sup> day of January, 2018.

LUVERA LAW FIRM

/s/ Robert N. Gellatly  
Robert N. Gellatly, WSBA 15284

COMPLAINT FOR DAMAGES - 6

**LUVERA LAW FIRM**  
ATTORNEYS AT LAW

6700 COLUMBIA CENTER • 701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 467-6090

1 David M. Beninger, WSBA 18432  
2 Andrew Hoyal, WSBA 21349  
3 6700 Columbia Center  
4 701 Fifth Avenue  
5 Seattle, WA 98104  
6 Telephone: (206) 467-6090  
7 [robert@luveralawfirm.com](mailto:robert@luveralawfirm.com)  
8 [david@luveralawfirm.com](mailto:david@luveralawfirm.com)  
9 [andy@luveralawfirm.com](mailto:andy@luveralawfirm.com)

6 CLIFFORD LAW OFFICES, P.C.

7 Robert A. Clifford

8 Michael S. Krzak

9 Sean P. Driscoll

10 (pending issuance of order granting motion to be filed for  
11 Limited Admission Pursuant to APR 8(b))

12 120 N. LaSalle Street, 31st Floor

13 Chicago, Illinois 60602

14 Telephone: (312) 899-9090

15 Telephone: (312) 251-1160

16 [rac@cliffordlaw.com](mailto:rac@cliffordlaw.com)

17 [msk@cliffordlaw.com](mailto:msk@cliffordlaw.com)

18 [spd@cliffordlaw.com](mailto:spd@cliffordlaw.com)

19 Attorneys for Plaintiff